

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION**

BWW, Inc., d/b/a)	
SERVPRO of Birmingham,)	
)	
Plaintiff,)	Case No.: 1:21-CV-00470-CLM
)	
v.)	
)	
James Brigham, et al.,)	
)	
Defendants.)	

NOTICE OF FILING

Comes now the Plaintiff/Petitioner, BWW, Inc. d/b/a ServPro of Birmingham “ServPro” and gives notice that it has filed a claim before the Alabama State Board of Adjustment against Jacksonville State University, the Alabama Department of Finance, the Alabama State Insurance Fund, the Alabama Division of Risk Management, and the Alabama Emergency Management Agency.

Under Ala. Code § 41-9-62, the Board of Adjustment’s jurisdiction excludes any matters subject to the jurisdiction of the courts. The Rules of the Alabama Board of Adjustment, Rev. August 24, 2021, recognize this substantive restriction as well as its procedural effects. Rule 22(b), provides that the Board will not hear claims so long as, “...litigation pertaining to the same facts is pending in any court.” And to the extent that the “...unconstitutionality or invalidity of any law, rule or

regulation...” is at issue, Rule 14(i), suspends Board consideration until the issue is judicially resolved.

ServPro’s Board of Adjustment claim reflects and is consistent with these limitations on the Board’s jurisdiction and the provisions of its rules. It notified the Board of the pendency of this case, and that even though the respondent agencies are not parties to it, and that neither the causes of action asserted, nor relief requested are within the jurisdiction of the Board to determine nor in its power to grant, some of the evidence, “pertain[s] to the same facts.” It further informs the Board that the constitutionality or validity of one or more “law[s], rule[s] or regulation[s],” or their application in this matter is pending resolution as well.

This case differs from the Board of Adjustment claim in several determinative respects. The parties to this action include only persons in their individual and official capacities.¹ The Board of Adjustment claim is asserted only against departments and agencies of the state or otherwise protected by Section 14 of the Constitution of Alabama. This action seeks only equitable relief against those defendants sued in their official capacities. Legal damages are sought only against defendants who (or which) are not within the scope of the 11th Amendment of the United States Constitution or Section 14 of the Constitution of Alabama. This suit

¹ To the extent that the complaint anticipates that private entities and individuals, such as insurers and agents, may be joined as defendants here as they and their roles become more fully known, their presence as parties in this action is not relevant to immunity defenses or the Board of Adjustment claim.

does not assert a breach of contract claim against JSU. If, after the judicial resolution of the claims raised in this lawsuit, additional relief is available from the Board of Adjustment, ServPro will accept it with appreciation to these defendants for their guidance.

Respectfully submitted this the 3rd day of December, 2021.

s/Barry W. Hair

Barry W. Hair (ASB-8620-h40b)

s/Brad J. Smith

Bradley J. Smith (ASB-6847-b52s)

Clark, Hair & Smith, P.C.
1000 Urban Center Drive, Suite 125
Birmingham, AL 35242
205-397-2900
205-397-2901 – Fax
E: bhair@chslaw.com
E: bsmith@chslaw.com

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been served on all parties by electronic filing with the Clerk of the Court using the CM/ECF system on this the 3rd day of December, 2021.

Wayne Morse
Waldrep Stewart & Kendrick, LLC
2323 2nd Avenue North
Birmingham, AL 35203
Telephone: (205) 327-8325
Email: morse@wskllc.com
Counsel for Defendants

Stanley J. Murphy
Murphy & Murphy, LLC
P.O. Box 3163
Tuscaloosa, AL 35403
(205)349-1444
E: murphyandmurphy@bellsouth.net
Counsel for BWB, Inc. d/b/a SERVPRO of Birmingham

/s/Brad Smith

Of Counsel